IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Sanjay Devi
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.419/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Sunil Beniwal, Advocate for the petitioner.
Mr.Sanjeev Johari, Advocate for the respondents.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

This writ petition has been filed by Smt. Sanjay Devi W/o Late Shri Ramavtar Saini. The late husband of the petitioner

was working as Constable in General Railway Police (GRP) and was posted at Jodhpur. It has been stated that late husband of the petitioner came back from election duty in the night on 15th September, 1999. He got up early in the morning on 16th September, 1999 and took bath and washed his clothes. He thereafter went up stairs to put the cloths for drying. While he was coming down his foot slipped and he could not maintain the balance and thus fell down which resulted into head injury instantaneously causing his death. The proceedings under Section 174 Cr.P.C. were initiated and a Mrig FIR No.18/99 was registered at Police Station Neem Ka Thana. Copy of the Mirg FIR and Panchnama of the death body have been placed on record. Postmortem of the petitioner's late husband was also conducted, according to which cause of his death was as under:-

> "The cause of death is coma due to head injury. All injuries mentioned above are anti mortem in nature and occurred within 24 hr. before death."

SHO Police Station Neem Ka Thana submitted report to SDM Neem Ka Thana after investigation that Mirg FIR be accepted. Copy of the such report dated 20th March, 2001 is

placed on record. In this investigation, the Police came to the conclusion that death of late husband of the petitioner took place due to head injury which in turn was caused due to his fall from the stairs.

The late husband of the petitioner was a member of Group Personal Accident Insurance Scheme since 1995 and regular premium was deducted from his salary towards subscription of the said scheme. The petitioner received a letter from Superintendent of Police, Northern Railway, Jodhpur on 01st August, 2000 in which she was informed that the departmental investigation process was going on and the insurance claim shall be soon settled. The petitioner however was surprised to receive a communication dated 22nd December, 2000 by which the claim of the petitioner's husband was rejected on the ground that his death was caused due to excess intake of liquor and not due to fall from the stairs. The petitioner thereupon failed a complaint before the District Consumer Protection Forum, Sikar which was rejected on 19th March, 2001 on the ground that the said Forum did not have the jurisdiction to entertain the complaint. It was thereafter the petitioner has filed the present writ petition with the prayer

that the respondents may be directed to pay the amount of insurance claim of her late husband under the Group Postal Insurance Scheme.

The writ petition has been contested by the respondents No.1 and 4. They in their reply submitted that the petitioner's late husband Shri Ram Avtar, Constable No.447, posted at G.R.P. Line (N.R.), Jodhpur was directed to proceed to Banswara for the purpose of election duty on 28th August, 1999. He was expected to report back at Jodhpur on 13th September, 1999. Instead of reporting at Jodhpur, he proceeded to his home town Neem Ka Thana, District Sikar. On 16th September, 1999 he while climb down fell from the stairs as a result of which he sustained serious head injuries and died. It has been stated that petitioner's late husband while working with the respondents become a member of the aforesaid scheme launched by National Insurance Company in collaboration with the State Insurance Provident Fund Department. Late Shri Ram Avtar was regularly making contribution/payment of premium towards the scheme. However, the Insurance Company refused to make payment of the claim solely on the ground that late husband of the

petitioner consumed excess liquor and he fell down from the stairs and died instantaneously. Death owing to act of intoxication lie out side the purview of the insurance policy.

The respondents No.2 and 3 have filed separate reply and stated that the petitioner was not insured with them. The respondent No.5 which is National Insurance Company has also filed a separate reply in which it has been submitted that they have got the matter thoroughly investigated by appointing one Shri J.P. Bhagotia as a Investigator. He submitted his investigation report on 12th August, 2000. The investigator found that deceased was habitual drunker and there were different kind of reasons being given for his death. He faced negative attitude of the members of the petitioner's family during investigation. This investigation report has been placed on record, in which the investigator concluded as under:-

> "It is a case of death by heard attack, Om Prakash, who is Deputy Chairman of Nagar Nigam has managed the whole show under the advise of police and police support. Since the cause of death in the postmortem report is shown, death due injuries and we have no positive evidence to counter it. We have no other option but to pay claim however the Company may like to seek the evidence of some legal expert before the claim is paid."

Though the Investigator concluded that it was a case of death by heard attack, but the matter was thereafter still referred to Dr. D.D. Gupta, Senior Physician who gave his opinion on 30th October, 2000 wherein he has stated that Shri Ram Avtar died on account of fall on the ground when he was struck with a stone.

Not being satisfied, the respondent No.5 again appointed one Kamal Bhatnagar as yet another investigator who submitted his report on 19th December, 2000. In this report, he claims to have recorded the statement of many of the relatives of the deceased and natives of his village especially his neighbours. He also procured the affidavits of certain residents and reported that the deceased was last seen under the excessive influence of liquor and was heard complaining about chest pain. He therefore concluded that the postmortem reported was procured by using influence of the brother of the deceased who was Vice Chairman of the Municipal Board, Neem Ka Thana solely with a view to receive the amount of Rs.2 lacs of insurance.

I have heard Mr.Sunil Beniwal, learned counsel for the

petitioner as well as Mr. Sanjeev Johari and Mr. Rameshwar Dave, learned counsel for the respondents and perused the record.

The report under Section 174 Cr.P.C. dated 16th September, 1999 has disclosed the reason for death of deceased due to fall on the ground. In the application submitted by the brother of the deceased on 16th September, 1999 itself, it was stated that while the deceased was climbing down after drying the clothes, his foot slipped on the stairs and he fell down, thus receiving head injury and died ten minutes thereafter. Panchanama of the dead body was prepared by Head Constable, Police Station Neem Ka Thana on 16th September, 1999 itself where in the presence of various motbir witnesses has been shown they have opined that death of the deceased Ram Avtar took place on account of fall from the stairs. The postmortem report has given the cause of death due to head injury and the description of the injury has been given as Bruises 8x4 cm. Mid parietal region of sealp. A Fracture on right parietal bone and a blood clot 10x6x0.5 cm. size on surface of the right brain were noticed by surgeon

conducting the autopsy of the deceased. The Police submitted the Mirg FIR report to the S.D.M. on 20th March, 2000. After thorough investigation and upon recording statement of the witnesses on the basis of postmortem report and panchanama it transpired that deceased Ram Avtar had gone to up stairs after taking bath and washing his clothes, his foot slipped in the stairs while he was climbing down. While he fall on the ground, he received head injury. The family members called a compounder who reported him to be dead. Not only this, the investigator initially appointed by the respondent No.5 in his report concluded that it was a case of heart attack but the brother of the deceased who was Vice Chairman of the Municipal Board has managed the whole show and procured a false postmortem report as also a wrong report from the police. The insurance company then referred the matter to their Medical Adviser Dr. D.D. Gupta who in his report dated 30th October, 2000 opined that "Mr. Ramavtar died on 16th September, 1999 because of fall on the ground when he struck with a stone and died after ten minutes." He however also opined that Ramavtar "deceased did not have serious injury to

the vital entries causing death in ten minutes time. Cause and effect of injury to the brain cannot be established."

Not being satisfied, the respondent NO.5 this time appointed one Kamal Bhatnagar, as Investigator who procured affidavits of certain natives of village and also recorded the statement of some other residents. On the basis of such inquiry he concluded that the petitioner was last seen under the excessive influence of liquor on 15th September, 1999 when he was also complaining of pain in the chest. He died because of chest pain owning to excessive intake of liquor in the previous night. The brother of the deceased who was Vice Chairman of the Municipal Board by using his influence procured false postmortem report and also police report solely with the object of receiving the amount of insurance claim.

In the normal course a dispute of this nature may not be maintained before this Court, however present one is a case where the writ petition has remained pending before this Court since January, 2002 and the respondents have also not raised any objection as to maintainability of the petition. Nonetheless, from scrutiny of the records, I find that so called three reports procured by the insurance company from the investigator do

not appears to be bona fide. These reports do not at all inspire any confidence. The final investigator has concluded that all the records including Mrig report under Section 174 Cr.P.C. submitted by the police, the panchanama of the dead body by the Panchas of the village and postmortem report conducted by three Senior Medical Officer of the Government Hospital were forged and managed by brother of the deceased who that time happened to be Vice Chairman of the Municipal Board.

With a view to giving credence to his report, the investigator has enclosed therewith four hand written affidavits on each of which adhesive stamp of five rupees has been fixed. These affidavits are photo copies of their originals but there is no sign of any attestation either before any oath commissioner or any notary public. They all appeared to have been written in the same hand writing of one single person.

The first investigator whom the insurance company appointed concluded that it was a case of death by heart attack whereas medical adviser opined that the deceased died because of fall on the ground when he was struck with the stone. The instructions issued by the state Insurance Provident

Fund Department, in its Clause (6) clearly includes accidents due to fall from the steps upon which the insurance claim could be allowed. Although clause 5 of the exception in the Personal Accident Insurance Policy (Group) has excluded the payment of pension in respect of both, injury by disablement of the insured person whilst under the influence of intoxication of liquor but this should be established by cogent and reliable evidence and not in a slip shod manner as has been sought to be done by the respondent No.5 in the present case. The postmortem report conducted by Senior Medical Officers, the Mrig report prepared by the SHO Police Station and the Panchanama of the dead body, which were all prepared on the very date of incident cannot be completely brushed aside just because the deceased happened to be brother of a Vice Chairman of the Municipal Board. The Insurance company having provided the cover of insurance to a government servant in collaboration with the State Insurance Provident Fund Department cannot repudiate claim of Insurance, without there being any reliable or cogent evidence to prove that the deceased was in the state of intoxication when he died particularly when postmortem

report does not contain any such fact.

As a result of the aforesaid discussion, the present writ petition is allowed and the respondent No.5 is directed to pay to the petitioner the amount of insurance policy with interest @ 6% per annum within a period of three months from the date of receipt/service of the certified copy of this judgment.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-